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Alternative Dispute Resolution in commercial transactions: A comparative study between the UK and Bangladesh Jurisdiction*

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Abstract: Alternative Dispute Resolution (ADR) entities have been authorized by national law to either offer a solution that, if accepted by both parties, will become binding on them or to impose a solution that will become binding on them regardless of their acceptance. According to the Money Loan Court Act 2003 of Bangladesh, ADR bodies have to appoint natural people who fulfill the criteria of knowledge, independence, and impartiality to complete the entire process of ADR successfully. Therefore, ADR processes can only be run by court-ordered mediation or autonomous administrative agencies, not the financial sector. The Code of Civil Procedure 1908 in Bangladesh clarifies that this procedure has been provided so that "the principles of independence and impartiality have been observed". ADR is an avenue to resolve a civil case without going to the court. There are diverse mechanisms of ADR that can resolve the issue. Undoubtedly, ADR has many advantages. However, it is pertinent to note that it has disadvantages as well. ADR has been promoted, and the concerned parties have been encouraged to use it before or during the trial. Lord Justice Woolf, a prominent jurist of the UK, solicited for ADR to avoid cost, delay and complexity in civil cases. On the other hand, ADR is not so familiar in Bangladesh. This paper aims to discover how Bangladesh promotes ADR in commercial disputes and how Bangladesh can follow the UK approach in this respect.

Kewwords: Alternative Dispute Resolution. Commerciality. Civil Procedure Code.

1 Introduction

Dispute settlement strategies and techniques that don't involve formal legal proceedings have been included in the umbrella term 'Alternative Dispute Resolution' (ADR). It's a catch-all phrase for any scenario where two parties work out their differences with or without a neutral third person. Even though many

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powerful interests and their supporters were initially opposed to alternative dispute resolution, this approach has now acquired universal support from the public and the legal community. It becomes standard practice for certain courts to insist that parties exhaust all available forms of ADR before their cases can even have been heard in the Court. The growing caseload of traditional courts, the belief that ADR imposes fewer costs than litigation, a choice for confidentiality, and the willingness of some parties to have greater control over the choosing of the person or people who will decide their dispute all contribute to the expanding popularity of ADR.[1]

2 Objectives of the study

Disputes arise often in commercial interactions between individuals and organizations. Multiple methods have been conducted to settle such conflicts. The legal system is the most typical example. The court system has its flaws, and there are times when individuals start to consider non-judicial methods of conflict settlement. ADR is an avenue to resolve a civil case without going to the Court. There are diverse mechanisms of ADR to resolve the issue. ADR is much cherished in the legal system of the UK. On the other hand, ADR is not so familiar in the context of Bangladesh. The objectives of this research are to find out the question how Bangladesh promotes ADR in disputes concerning commercial transactions and how Bangladesh can pursue the UK approach in this regard.

3 Methodology of the study

This study was conducted using the doctrinal research method. This approach, sometimes known as the 'black letter' technique, is concerned with interpreting and applying the law according to its strict letter rather than its spirit. Research that employs this strategy provides in-depth, narrative analyses of primary-source legal standards (case laws, statutes and regulations). This study compares and contrasts the laws concerning ADR of the United Kingdom and Bangladesh. The data used in this study have been gathered secondarily. Both systematic database searches and internet-based 'snowballing' strategies (following one link that leads to another) have been used to locate relevant literature. Besides, information has been collected from credible sources such as academic journals and government policies on arbitration. The findings have been evaluated using the broad perspective of the study. There was an attempt to combine data from different sources.

[1] J. Gillis Wetter, *The Internationalization of International Arbitration: Looking Ahead to the Next Ten Years,* 11(2) Arbitration International 117-135 (1995).

4 Arbitration in the Dispute Resolution Process

In the United Kingdom and Bangladesh, like in the rest of the globe, arbitration is a well-known form of alternative dispute resolution. The only way to begin the arbitration procedure is for the parties to agree to settle dispute through ADR in writing. Worldwide commercial parties frequently resort to arbitration as an alternative to going to Court. There are various factors play here, and the rising number of conflicts have been submitted to various arbitral organizations is indicative of the growing acceptance of arbitration. It is needless to discuss in detail to explain the primary benefits of arbitration. Disputes may be settled in a private and impartial setting with the help of arbitrators mutually agreed upon by the disputing parties through arbitration. Arbitration may be less expensive and swifter than litigation, and the final judgment will be enforceable, all without the involvement of state courts (and the associated costs, delays, and uncertainty commonly inherent in litigation).[2]

ADR is gaining prominence in the American justice system as well. The ADR models available are diverse. There are two main categories of ADR. Those are Adjudicative ADR and Non-Adjudicative ADR. Adjudicative ADR requires compliance with the decision of an arbitrator or expert. Regarding ADR that does not include an impartial third party to render a ruling, the parties have not legally been compelled to comply with the outcome. Non-adjudicative ADR includes negotiation, mediation, conciliation, and early neutral evaluation. Adjudicative ADR includes arbitration and expert decisions. There are no discrepancies between EU Member States' complaint systems regarding the industries they cover and the quality processes that should have been followed. Because of these disparities, many customers are wary of buying products or services from other Member States. They also have of lack faith that any complaints with merchants may be resolved in a simple, quick, and economical manner. As a result of these problems, it has been decided that all Member States should follow the same guidelines for responding to consumer complaints.

5 Procedure of ADR in the UK

A commercial party needs to consider ADR before going to the Court as per the provisions of Civil Procedure Rules 1998 of England. According to CPR 1998, Member States must make it easier for consumers to use ADR procedures of a dispute involving the performance of a contractual obligation, such as a sale or the provision of a service, both within and across national borders. In this regard, the following standards have been set for ADR entities: The people in charge of

[2] Ibid.

alternative dispute resolution (ADR) should have relevant experience, be free from bias, and be able to make objective decisions.

5.1 Transparency

ADR entities shall make readily available to the public, in a manner that they deem suitable, clear, and easily understandable information on both the entity and the procedure via their websites, on the durable media upon request, and via any other methods they deem fit; – efficiency: ADR procedures should be efficient if they meet specific requirements. These requirements include that the procedure be available and easily accessible online and on paper for both parties regardless of where they are. The process is offered free of charge or at moderate costs to consumers. The outcome of the ADR procedure is made available to the parties within ninety calendar days of the date on which the ADR entity has received the complaint this rule for EU consumer dispute.[3]

5.2 Fairness

There are established criteria that ADR procedure must meet. Those are: (i) the parties have the opportunity to express their point of view; (ii) the parties are provided by the ADR entity with the reasoning, proof, papers, and facts put forward by the other party; (iii) any statements made and opinions given by experts; (iv) the parties are made aware of the outcome of the ADR procedure in written form or on a durable medium, and issued a statement of the reasons for the outcome. If a consumer and a merchant agree before a dispute arises that requires the consumer to submit complaints to an ADR entity and has the effect of depriving the consumer of his right to bring a claim before the courts for the settlement of the dispute, the deal is not conclusive on the consumer and the merchant.[4]

At the present time Online Dispute Resolution (ODR) is common for commercial disputes. Such as in EU, Regulation (EU) No. 524/2013 establishes the framework for an online dispute resolution platform (from now on 'ODR platform') to serve as a single point of entry for consumers and professionals seeking online alternative dispute resolution through ADR entities located within the European Union. This process has been provided so that both parties can more easily access and use the ADR procedure concerning a dispute arising from purchasing goods or services made online. Regarding information technology, the ODR platform will take the shape of an easily accessible and multilingual website where users may submit

[3] Ibid.
[4] Ibid.

and track disputes at no cost. This site will offer an online complaint form for the applicant to fill out and advance; it will notify the defendant of the complaint; it will pinpoint appropriate ADR entities; etc. Thus, the Directive 2013/11/EU and the Regulation (EU) no. 524/2013 are two linked and supplementary pieces of legislation. The Directive stipulates the recognition of one or more competent authorities and the jurisdiction of a competent authority as a contact point for the European Commission to verify that ADR organizations are satisfying the quality standards.

England and Wales have a long tradition of alternative dispute resolution. Numerous changes occurred over ADR's past, and it has been intended to cover them here. The phrase "access to justice" became the rallying cry for overhauling the civil judicial system. While Lord Woolf was in office in 1997 and 1998, he introduced the Civil Procedure Rules (CPR) 1998 that was a monumental change to the civil justice system in England and Wales. Significant emphasis has been given to the ADR in CPR 1998, and it has been examined here as well.

Since 1960, when the efficacy of the state and its institutions has been called into doubt, the ADR has stagnated in its growth. Many citizens of the period, especially in North America, were unhappy how the state did things and demanded change. Additionally, the judicial system and courts came under fire. There were a lot of factors at play here. Reforms have been made in large part because of advances in legal theory. Alternative Dispute Resolution (ADR) is not a new phenomenon in English Law. It is quite evident that ADR mechanisms have been applied in English Law as early as the 1400s. Anon [1468] YB 8 Edw IV, fo1, p1 (English) is a leading case where arbitration has been applied. The very first law concerning arbitration came into force in England in 1697. Before going to Court, the parties may try for a compromise. The London Court of International Arbitration, which has been established in 1892, is one of the oldest and most prestigious centers for international dispute resolution. As early as 1915, the Chartered Institute of Arbitrators has been formed. While the practice of negotiation and mediation were not unknown at the period, neither the courts nor official institutions recognized them as valid options. The ombudsman, however, has been present in the United Kingdom since 1967. Beginning in 1970, the ADR saw rapid expansion in the UK. At the same time, the American public has been debating the virtues of litigation, the effectiveness of settlements, and the fairness of the adjudication process. The Advisory, Conciliation, and Arbitration Service (ACAS) was established in 1975 in the UK to promote ADR. A labor dispute resolution board or panel attempts to settle a disagreement between two or more parties involved in an employment dispute. The government provides the funding for this group. The Court strongly suggests that the parties take this opportunity to settle. The case at hand is Calderbank v. Calderbank [1976] Fam 93.

In 1994, the Commercial Court issued the practice note Commercial Court: Alternative Dispute Resolution [1994] 1 All ER 34, which stipulated that lawyers in commercial cases should consider mediation, conciliation, or otherwise (negotiation) to resolve the dispute between the parties and that parties should have been fully informed about the cost-effective method of determining the dispute. There was an increase in customer satisfaction with ADR due to this campaign, particularly in business situations. High Court Practice Note (Civil Litigation: Case Management) [1995] likewise emphasized the need of ADR. This memo offers the Court further oversight of the case by asking the attorneys and parties about alternative dispute resolution (ADR) and whether or not it has been considered as a means of resolving the disagreement before going to Court. The London County Court's mediation pilot program for claims of more than £3,000 has been established in 1996. In 2004, this has been ultimately implemented nationally.

The Woolf Reform provided the possibility of application of ADR in England and Wales. The English civil court system has been criticized for its high costs, lengthy proceedings, and overall difficulty for quite some time. The onus of silencing that critique rests squarely on Lord Woolf's shoulders. Due to its adversarial nature, the English civil court system is scandalously slow, costly, and complicated, as suggested by Lord Woolf. In 1996, Lord Woolf argued that the judge should have more say over the handling of civil cases to reduce costs, delays, and complexity in the system. Case management has often been left up to the parties involved in an adversarial system. Lord Woolf's suggestion became part of the Civil Procedure Rule 1998. Rule 1.1 of CPR outlines the overriding purpose and suggests using ADR to achieve the end of justice. Under rule 1.1 of the CPR 1998, the judge in a civil case is required to facilitate alternative dispute resolution (ADR) between the parties. Even the Civil Procedure Rules of 1998 (CPR 1998) recommend that parties attempt ADR before resorting to litigation or pre-action protocols. The Ministry of Justice has created a new protocol known as "Pre Action", which covers 13 distinct areas of civil law and one umbrella area dealing with contracts. Since 2007, the proceedings in the Country Court have increasingly frequently included mediation. Since 2011, the English government and the civil mediation council have backed a web-based program to provide this drug. The Minor Claims Mediation Service has offered free mediation for small claims up to £1000 in value since 1 April 2011. This issue relates to CPR 26.4 (1998). Case law decided after the year 2000 also favors ADR. If the parties cannot settle the dispute through alternative dispute resolution, the Court may impose penalties on them, as stated in Dunnett v. Railtrack [2002] 1 WLR 2434. Even if a party wins in Court, the Court still has the option of imposing sanctions to concerned parties. So, the point is not who wins the case but whether or not the parties in the litigation contemplate ADR at an early stage of the case or during the period of pre-action protocol, both of which are

relevant for imposing penalties. After two years of this case, in 2004, the English Court in Halsey v. Milton Keynes NHS Trust [2004] 1 WLR 3002 considered the possible value of voluntary contemplation of ADR by the parties to their disputes. The Court ruled that the parties were not required to engage in ADR but that they may incur financial penalties if they did not comply with the Court's directives. ADR is also discussed, with the Jackson's Reform has been offered. According to Sir Geoffrey Vos, Chancellor of the High Court, "the parties are obligated to pursue litigation jointly and engage constructively in a settlement process" in the case of OMV Petrom SA v. Glencore International AG [2017] EWCA Civ 195. This decision adds more support to the ADR procedure.

In addition to advancements mentioned earlier concerning ADR, the Family Producer Rules of 2010 became law on April 6th, 2011. The Pre-Application Protocol for Mediation Information and Assessment is the focus of both Part 3 and Practice Direction 3A. The parties in a family disagreement require to have been informed of the mediation process and its benefits, and the Court will have the authority to hear cases involving family issues through that method. EU directive 2008/52/EC also promotes mediation across the EU, and the Civil Procedure (Amendments) Rules 2011 updated the mediation process in the UK. The mediation agreement between the parties must be recorded as a Court order and in support of mediation per Rule 78 of CPA 1998. Simultaneously, alternative dispute resolution (ADR) flourished inside the English Civil justice system. In February 2015, the Online Disputes Resolution Advisory Group of the Civil Justice Council released a paper titled Online Dispute Resolution for Low-Value Civil Claims. It suggested a new online court system for settling minor civil cases. When the Arbitration Acts of 1697 and 1996, the Civil Procedure Rules of 1998, the decisions of the Courts, and other institutional initiatives for ADR have been applied, ADR has got the momentum to flourish in the civil litigation process in England and Wales.[5]

The Arbitration Act 1996 governs arbitration in England and Wales. One way in which arbitration differs from traditional litigation is that the parties themselves appoint the arbitrators, rather than the state appointing them in the instance of appointing arbitrators for mandatory arbitration. Though this method may be used to any issue, it is most commonly used to resolve disagreements that arise as a result of a contract between the parties. Some arguments, however, cannot be settled by consensus. In situations of public law, one cannot rely on assertions to determine one's legal standing. However, arbitration cannot be used in the following situations: relationship status, child care arrangements, license legitimacy, liability in criminal cases, insolvency, and the standing of a public option to proceed.[6]

[5] Ibid.

[6] Susan Blake, Julie Browne & Stuart Sime, A Practical Approach to Alternative Dispute Resolution, (Oxford University Press, 2020).

To sum up, it may be argued that in the previous forty years, there has been a major rise in the number and range of acceptable dispute-resolution (ADR) institutions and processes in England and Wales as a crucial part of enhanced access to justice. Although more individuals have access to ADR procedures, the questions of whether or not this access is shared evenly among the community, how the disadvantaged fare in these processes, and what kind of justice is offered by the various ADR processes have been investigated. ADR has been emphasized on its goal to ensure justice. Access to justice has been believed as the overriding goal that should inform the design and implementation of ADR processes, which in turn should consider the kind or nature of the dispute, the parties involved, and the availability of resources. Equally important, assessing the success of alternative dispute resolution (ADR) processes regularly is essential for enhancing access to justice.

6 Arbitration in Bangladesh

Regarding ADR in commercial disputes, arbitration is one of the most common methods used in Bangladesh. Arbitration is a relatively new idea in Bangladesh, and most people still are not so familiar with it. As a result, people with legal difficulties in Bangladesh are increasingly turning to the courts for help. Though alternate dispute settlement has been applied in Bangladesh earlier, arbitration has been governed by its own set of laws since 2001.[7] Bangladesh's agriculture sector is usually popular with foreign investment because of the country's status as a thriving textile industry hub. As a result, arbitration is now widely used in commercial disputes in Bangladesh. When Bangladesh gained independence in 1971, it adopted the Arbitration Act of 1940. The UNCITRAL Model legislation served as the inspiration for this statute. The arbitration procedure has been hampered by the various flaws in this 1940 Act. A significant issue is that parties have to face difficulties to enforce international arbitral rulings under the 1940 Act, which gives the national Court broad power over the arbitration process and procedure. The foreign arbitral decision has not been addressed by this Act of 1940. Therefore, it has created difficulties to solve dispute. The government of Bangladesh passed a new arbitration law in 2001 to replace the outdated 1940 Act. The year 2001 saw the passing of a law regulating arbitration proceedings. This legislation from 2001 borrows heavily from the UNCITRAL Model Law. Arbitration in civil cases in Bangladesh is addressed not only by the 2001 law but also by the Civil Procedure 1908 and the Money Loan Court Act of 2003. Notably, neither the Civil Procedure Act of 1908 nor the Money Loan Court Act of 2003 has provided any provision for

[7] Sameer Sattar, *Asian Pacific Arbitration Review on Bangladesh,* Country Chapter, (2016).

the parties to have an agreement in advance. The parties have also been bound by the arbitration rules established by the Bangladesh Energy Regulatory Commission in the event of a disagreement. The commission has the authority to settle energy-related issues between licensees and customers according to Section 40 of the Bangladesh Energy Regulatory Commission Act 2003.

The domestic and foreign varieties of commercial arbitration are treated differently in the Bangladesh Arbitration Act of 2001. International arbitration is an option in Bangladesh if foreign parties are involved in the issue. Possible participants in the arbitration procedure in Bangladesh are listed in Section 2(c) of the Arbitration Act 2001. Those are: (i) any person whose primary place of residence is not in Bangladesh; (ii) any corporation whose administration and control are carried out mostly outside of Bangladesh; and (iii) any government not located in Bangladesh. In Bangladesh, arbitration procedures between two domestic parties must be launched in the Dhaka District Judge Court. In contrast arbitration proceedings between foreign parties must be initiated in the High Court division of the Supreme Court of Bangladesh.

However, other than the arbitral council sponsored by the Bangladesh Energy Regulatory Commission, there is no professional arbitration tribunal available under the overall legal framework in Bangladesh to mediate commercial arbitration matters. Assuming there is an arbitration clause in the parties' agreement, disputes have been often settled by private arbitral councils made up of retired Appellate Division and High Court Division Judges.[8]

The Arbitration Act of 2001 attempted to streamline the process by which international arbitral judgments may have been implemented in Bangladesh. But in practice, this has proven to be a daunting task. Dhaka's District Court (for domestic arbitration) or High Court (for international arbitration) must have been petitioned by the awarding party, and the grounds for the Court's refusal to recognize the award are listed. For instance, if granting an award would go against Bangladeshi law, it would likely have been denied. It is to be noted that the Act of 2001 does not define "public policy", leaving it up to the national courts to determine what that term means. One of the most significant challenges to the growth of arbitration in Bangladesh is the difficulty to enforce international arbitration rulings. Reforms in this area are necessary in Bangladesh.

In Bangladesh, institutional arbitration has initially been carried out by the Bangladesh International Arbitration Center (BIAC). Bangladesh International Mediation & Arbitration Center (BIMAC) has just begun assisting in arbitration in Bangladesh. They assist to business parties during arbitration. They're offering

[8] Ibid.

their services as a place to hold the arbitration. In Bangladesh, they routinely had seminars and courses on arbitration. Because of their efforts, arbitration is now well-known in Bangladesh. However, the idea of institutional arbitration is not as widespread in Bangladesh.[9]

The Arbitration Act of 2001 is relevant to this discussion because of its application to arbitration in Bangladesh. If the parties can agree on a single arbitrator or select their own arbitrators, the appointment process can go rapidly in Bangladesh. However, the contesting parties may be unable to agree on an arbitrator or, in the event of a three-member Tribunal, that one of the parties would be unable or unwilling to propose an arbitrator due to the enmity between them. Under Section 12 of the Act, a concerned party must request the intervention of the appropriate Court to have an arbitrator appointed. Appointing arbitrators under Section 12 of the Act will not pose a significant obstacle until virtual courts begin operating, as was previously indicated.[10]

International arbitration has been treated differently from domestic arbitration under Bangladeshi Law. When one of the disputing parties is a foreign firm and the arbitration agreement specifically refers to the case as international business arbitration, the case is indeed international business arbitration. However, if both litigants are citizens of Bangladesh, the proceeding at hand would have been categorized as a local arbitration rather than an international one.[11] Arbitration involving disputes arising out of legal relationships, whether contractual or not, that are considered to have been commercial under the law prevailing in Bangladesh and where at least one of the parties is from a country other than Bangladesh, is defined as international commercial arbitration in Section 2(c) of the Arbitration Act, 2001 as "(i) A person who is neither a citizen nor a permanent resident of Bangladesh; (ii) a company that is not headquartered in Bangladesh but is instead has been recognized by the laws of another country; (iii) A company, association, or group of persons is considered to be foreign if its principal place of business is in a country other than Bangladesh and its top officers do not reside in the country; (iv) An overseas administration". It has been made clear throughout the definition that every one or any corporation, firm, or other organization not located in Bangladesh is a foreign entity and hence subject to international commercial arbitration. Surprisingly, a literal interpretation of the term of international commercial arbitration shows that the Arbitration Act does not apply to commercial disputes involving two Bangladeshi nationals with distinct places of business, even

9 Ibid.
10 Ibid.
11 Ibid.

though they have been situated in the same country. Therefore, the arbitration's nature is largely has been determined by the nationality of the disputing parties.[12]

If a foreign company has been involved in an international commercial arbitration, then entire procedure of the arbitration would be initiated and conducted in the High Court Division of the Supreme Court of Bangladesh. Any party seeking injunctive or other interim relief in an international commercial arbitration must apply to the High Court Division, in contrast, in a domestic arbitration the application must have been filed with the District Judge Court of Dhaka. Interim proceedings in domestic arbitrations are appealable to the High Court Division. If any party has been aggrieved he would file an appeal to the Appellate Division of the Supreme Court of Bangladesh as the procedure begins in the district courts. In-fact, there is no material differences in the methods of applying ADR in both the Courts. The legislature may have wrongly presumed that the High Court Division has been better equipped to judge the difficulties of international arbitrations as it settles important legal problems in international commercial arbitrations.[13]

Under Section 25 of the 2001 Act, the parties to a dispute in Bangladesh have total discretion over the method to be followed in the arbitration procedures, making arbitration a desirable means of conflict resolution. It is to be noted that the Tribunal is not bound by the Code of Civil Procedure or the Evidence Act in its proceedings, as per Section 24 of the Act 2001 Act. In addition, virtual or in-person hearings have not been required since Section 30 of the 2001 Act allows the Tribunal to undertake the processes solely based on papers supplied by the parties unless the parties agree differently.[14]

The administration of commercial arbitration procedures is, unfortunately, decentralized. The arbitration process is managed and administered by the concerned parties. Only if an arbitration award has been contested will the existence of any procedures become part of the public record. According to BIAC representatives, however, 54 arbitration cases involving over 294 sessions have been initiated at BIAC by parties from the energy sector, non-banking financial institutions, and non-governmental organizations since the center's founding in 2011.[15]

When it comes to improving the effectiveness of arbitrations in Bangladesh during this epidemic, the Bangladeshi legislature might play a pivotal role by enacting certain required adjustments to the Act as soon as possible, even if such amendments remain in force for a brief duration. Without going into great detail on all the essential adjustments (which is a different issue for considerable

12 Ibid.
13 Ibid.
14 Ibid.
15 Ibid.

discussion), the amendments that have been urgently required during this epidemic include, among others: the Act should: a) impose a strict time limit on arbitrations held under the Act; b) establish a structure for the fees that an arbitrator may charge; c) further restrict and make unambiguous the grounds for challenging an award; d) give exclusive jurisdiction to the High Court Division to hear challenges to domestic and international commercial arbitration awards and impose a strict time limit for passing such orders; and e) establish a streamlined procedure for enforcing arbitration awards.

While the Money Loan Court Act of 2003 established specialized courts to hear cases involving the recovery of loaned funds, no expedited business dispute resolution courts exist in the country. The existing judicial system does not require any form of mediation or alternative conflict resolution before trial. Except if arbitration has been expressly required by the parties in an agreement, parties are free to bring lawsuits in a court of law. Arbitration as a means of resolving legal disagreements is not required by Bangladeshi law but has been made binding when agreed upon by the parties to a contract. In the event of a dispute, Bangladeshi courts will consider the matter to have been led with the official court system and they will refer the parties to arbitration if an arbitration provision is present (Section 7 read with Section 10 of the Arbitration Act). However, under Section 89B of the Code of Civil Procedure, 1908, the parties to an action may petition with the Court at any time to withdraw the complaint on the pretext that they would send the issue or disputes to arbitration for settlement.[16]

Mediation and arbitration are two notable accessible alternatives to traditional courtroom litigation. The Court can mediate disputes between litigants at its discretion under Section 89A of the Code of Civil Procedure, 1908. The Court may also refer disputes to the parties' pleaders, to the parties themselves if they have not retained pleaders, or to a mediator from the panel of mediators. The Arbitration Act governs one of the most used alternative dispute resolution mechanisms, private arbitration proceedings.[17] An arbitration ruling, which has been contested in Court cannot be quickly resolved or enforced by any alternative means. In the event of a formal challenge to an award, the Code of Civil Procedure, 1908 would be applied, and the matter may be heard by the Supreme Court. The Money Debt Court Act does not mandate any form of alternative dispute resolution or pre-action process be followed before filing suit to collect a loan and interest.[18] Notwithstanding the restrictions of the Code of Civil Procedure 1908, under Section 22 of the MLCA, the Court shall select a chosen lawyer for settlement through arbitration when the

[16] Ibid.
[17] Ibid.
[18] Ibid.

defendants in money loan recovery litigation submit a written declaration to the Court. The lawyer is often chosen from a reserved panel at the Court and cannot be one of the lawyers for the parties. If the parties are unable to settle their disagreement through arbitration, as required by Section 45 of the MLCA, the case will go to trial.

7 Conventions and Procedures of Arbitration Institutions in Bangladesh

Rules for initiating arbitration procedures filed under the Arbitration Act have not been drafted by the government yet. The parties may use their own rules, those of their choice, or any rules those have been recognized globally (i.e., the ICC rules when commencing arbitration proceedings under the Arbitration Act). The whole set of BIAC's arbitration rules may have been seen on the organization's website.[19]

When no binding regulations for arbitration institutions are in place, the parties to a contract may agree to utilize the rules established by the BIAC in the event of arbitration. But in both international and local arbitration, it is standard practice for the parties to develop their own rules.[20]

8 Conclusion

Finally, arbitration may have been defined as "one of the ways where the parties resolve their issue without going to court". As a result of its many benefits, arbitration has found widespread usage in the business sector. Arbitration is a voluntary procedure in which a third party hears arguments from both sides of a business dispute and then decides based on the applicable legislation agreed upon by the parties. Due to its suitability of business practice, arbitration has gained widespread acceptance in the business sector. One side of an international conflict comes from one country, whereas the opposing side often comes from another. Consequently, business litigation and conflict arbitration on a global scale are pretty significant.

Furthermore, in cross-border conflicts, especially those involving complicated international commercial links, arbitration "is the most widely employed technique to settle disputes, typically dealing with considerable financial concerns". "The United Kingdom is one of the most arbitration-friendly jurisdictions in the world".

Rather than going to Court, business partners increasingly turn to arbitration as a dispute resolution method. To settle disputes concerning commercial

[19] Ibid.
[20] Ibid.

transactions in Court might be costly and time-consuming, therefore, ADR grew popular in commercial arena. The caseloads of Courts may have been lightened when parties choose arbitration instead of going to Court by using one of the many available arbitral organizations.

Since the Second World War, arbitration has become one of the most reliable and often used approaches to settling legal disputes. The importance of an arbitrator's independence and impartiality increases when the dispute has been resolved through international arbitration. When compared to the conventional court system, arbitration offers several benefits. Due to its status as a separate, impartial, and independent mechanism, arbitration helps keep the courts out of the judicial system. Arbitration is executed by private citizens rather than by the government. Due to its efficiency, privacy, and autonomy for both parties, arbitration plays a pivotal role in business disputes. Regarding commercial disputes, arbitration has been a significant player in recent history, and it continues to play a crucial role today. Since the interest of justice in the business world rests in the hand of the Arbitrator, it follows that the Arbitrator must carry out their duties in the interest of justice.

Arbitration is a well-established practice in the UK. In contrast it is an emerging footing in Bangladesh. To settle prevalent disputes in Bangladesh, a more radical strategy is needed. It's crucial to highlight Bangladesh's exceptional work during the epidemic; especially certain arbitration proceedings take place virtually. Commercial arbitration provisions are now standard practice in Bangladesh following implementing the country's Arbitration Act 2001. If the parties to a business dispute agree and the contract does not contain an arbitration clause, then they may submit the disagreement to arbitration under the said Act.

Arbitration as a method for settling legal disputes is still in its early stages of development in Bangladesh. It implies that a delay in enforcing otherwise enforceable award may occur if the award is contested in Court, as is commonly the case. As a result, the arbitration procedure in Bangladesh may result in extra delays and may be eventual litigation, despite its efficacy in the business environment, assuming the opposing side is equally willing and rational. Prospective investors have been cautioned to do their homework on their local company partner's legal standing before entering into any contracts with an arbitration clause.

To get the most output of an agreement, it's ideal to have the arbitration take place in a country with clear rules for such matters, such as Singapore if doing so is financially feasible under the conditions of the proposed commercial contract. However, the problem with this choice is that domestic courts in Bangladesh cannot provide interim measures while the award has been enforced.

The United Kingdom remains one of the most sought-after locations for international arbitration. The Act provides a solid framework. It is the Court's

jurisdiction to implement the Act's underlying principles that gives the UK its practical appeal of a seat. The English legal system, which has extensive experience with complicated arbitration cases, will not be significantly impacted by Brexit. Further, Brexit has not been expected to have a significant impact on London's abundance of highly skilled arbitrators. The United Kingdom, and more specifically England and Wales, is a popular choice as an arbitration seat because of the country's familiarity with the process and its appreciation for the policy considerations and procedural advantages. Most recently decided cases have shown that the English courts are entirely behind international arbitration.

Last but not the least one may make the case that Bangladesh is a relatively tiny country. However, the arbitration system is quite similar to that of the United Kingdom and other developed nations. While the scope of arbitration in civil disputes in Bangladesh is limited, the arbitration procedure in the United Kingdom is extensively covered. The use of arbitration has grown in popularity in both nations. Commercial parties in Bangladesh followed the arbitration and avoided court action to save time and money despite ongoing issues with arbitration rulings in Bangladesh. As a result of the high cost of arbitration, several businesses prefer to resolve their disputes through mediation instead. However, unlike arbitration, mediation in this case has no legal weight and must be resolved via that process. Therefore, there are problems here. Without a shadow of a doubt, arbitration is one of the most successful means of resolving disputes around the global disputes.

Resolução Alternativa de Disputas em Transações Comerciais: um Estudo Comparativo entre as Jurisdições do Reino Unido e Bangladesh

Resumo: As entidades de Resolução Alternativa de Disputas (ADR) foram autorizadas pela legislação nacional a oferecer uma solução que, se aceita por ambas as partes, se tornará vinculante para elas, ou impor uma solução que será obrigatória independentemente de sua aceitação. De acordo com o Money Loan Court Act de 2003 de Bangladesh, os órgãos de ADR devem nomear pessoas físicas que atendam aos critérios de conhecimento, independência e imparcialidade para concluir com sucesso todo o processo de ADR. Portanto, os processos de ADR só podem ser conduzidos por mediação ordenada pelo tribunal ou por agências administrativas autônomas, e não pelo setor financeiro. O Código de Processo Civil de 1908 de Bangladesh esclarece que este procedimento foi estabelecido para que "os princípios de independência e imparcialidade sejam observados". ADR é um caminho para resolver um caso civil sem a necessidade de recorrer ao tribunal. Existem diversos mecanismos de ADR que podem resolver a questão. Sem dúvida, as vias alternativas de solução de conflitos oferecem vantagens e desvantagens e têm sido promovidas para utilização antes ou durante o julgamento. Lord Justice Woolf, um jurista proeminente do Reino Unido, defendeu o uso das ADR para evitar custos, atrasos e complexidade em casos civis. Por outro lado, as ADR não são tão familiares em Bangladesh. Este artigo tem como objetivo descobrir como Bangladesh promove tais vias alternativas em disputas comerciais e como o país pode seguir a abordagem do Reino Unido.

Palavras-chave: Resolução Alternativa de Disputas. Comercialidade. Código de Processo Civil.

References

Anthony Evans, *Of Judges and Arbitrators,* 67 (3) Arbitration 254-262 (2001).

A. F. M. Maniruzzaman, *International Commercial Arbitration in the Asia-Pacific: Asian Values, Culture and Context,* 30 (11) International Business Law Journal 508-515 (2002).

A. J. Van Den Berg, *Justifiable Doubts as to the Arbitrator's Impartiality or Independence,* 10 (3) Leiden Journal of International Law 509-520 (1997).

Arthur Marriott, *Arbitrators and Settlement,* 70 (4) Arbitration 297-307 (2004).

B. Manzanares Bastida, *The Independence and Impartiality of Arbitrators in International Commercial Arbitration from a Theoretical and Practical Perspective* 6 (1) REM (2007), http://revistas.uexternado.edu.co/index.php/emerca/article/download/2070/1855.

David W. Plant, *The Arbitrator as the Settlement Facilitator,* 17(1) Journal of International Arbitration, 143 (2000).

J Gillis Wetter, *The Internationalization of International Arbitration: Looking Ahead to the Next Ten Years,* 11(2) Arbitration International 117 (1995).

Luke R Nottage & Romesh Weeramantry, *Investment Arbitration in Asia: Five Perspectives on Law and Practices,* 28 (1) Arbitration International (2012).

Piero Bernardini, *The Role of the International Arbitrator,* 20 (2) Arbitration International 113-122 (2004).

Robert Merkin QC, *Substantive Jurisdiction and the Arbitration Act 1996,* 3 Journal of Business L*aw* 273-284 (2021).

Sameer Sattar, *Asian Pacific Arbitration Review on Bangladesh,* Country Chapter, (2016).

Susan Blake, Julie Browne & Stuart Sime, A Practical Approach to Alternative Dispute Resolution, (Oxford University Press, 2020).

Will Pryor, *Alternative Dispute Resolution,* 62(3) SMU Law Review 843-854 (2009).

Yves Fortier, *Arbitrators, Corruption, and the Poetic Experience: 'When Power Corrupts, Poetry Cleanses,* 31, Journal of International Arbitration 367–380 (2015).

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